

US EPA RECORDS CENTER REGION 5



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ITEM 7

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**Issuance of a Request for Response Action of Riley Tar
and Chemical Corporation.**

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KIRBY A. KENNEDY & ASSOCIATES

PHONE: (612) 922-1983

411 EDINA EXECUTIVE OFFICE PLAZA
5200 WILSON ROAD
MINNEAPOLIS, MINNESOTA 55424

HEARING ROOM AVAILABLE
ST. PAUL, MINNESOTA

1 MS. JEPSEN: The first appearance item is Item
2 umber 7 -- issuance of a request for response action of Riley
3 ar and Chemical Corporation. Mr. Riner and Wikre.

4 MR. WIKRE: My name is Dale Wikre, Director
5 f Solid and Hazardous Waste Division. With me today is Steve
6 iner, the Project Officer on this particular project. Also,
7 teve Shakman, from the Attorney General's Staff, who is
8 nvolved in the litigation.

9 The items that you have before you requests that the
10 ard authorize three specific actions.

11 The first one is the issuance of a request for respons
12 ction to Riley Tar and Chemical Corporation to deal with the
13 ound water problems in the St. Louis Park area.

14 The second action we are requesting is to authorize
15 e Executive Director to request the Attorney General to amend
16 existing litigation to include claims under the state's
17 uperfund.

18 The third action is to authorize the expenditure of
19 neys from state superfund to deal with litigation expenses
20 t will be and are being incurred with regard to the ongoing
21 itigation.

22 I believe the Board is very familiar with the situatio
23 garding Riley Tar and Chemical and the St. Louis Park ground
24 ater contamination problems so I won't go into the background
25 t you have seen over and over again in numerous Board items

1 that have come before this Board.

2 At this point in time, we are asking you to relate
3 this rather well known history to the administrative procedures
4 that are included in the state superfund. Specifically, we
5 ask that you make the findings that are necessary.

6 First is that there is a release, that the release is
7 from a facility, that it involves hazardous substances and that
8 Riley Tar and Chemical is a responsible party. I believe because
9 of your knowledge of the site, I am not going to go into the
10 detail that's in the Board item that lays out the justification
11 for each one of those findings.

12 I would like to briefly describe, however, the response
13 actions that are being requested of Riley Tar and Chemical
14 Corporation in the Board item. A little history. By the actions
15 that are being requested, are the result of many years of
16 investigation that have taken place surrounding this problem.
17 These studies started long before anyone ever heard of federal
18 superfund, state superfund, the words response action, remedial
19 investigations, feasibility studies. None of these terms and
20 acronyms had yet been thought of or invented. It has taken us
21 quite a while to reach the point that we are at today but I
22 think it's important to remember that the staff, this agency,
23 and the health department, and others, were doing this work
24 long before there was anyone else in the country who was
25 investigating similar kinds of contamination and it has taken u

1 a great deal longer than it would take us if we were starting
2 those studies today.

3 The goal of the request action that we are asking you
4 to approve is basically to protect groundwater quality for the
5 actual or potential use as drinking water in the St. Louis Park
6 and surrounding area. Where it is not practical because of the
7 levels of contamination that already exist, the goal is to
8 contain the existing contamination to its present extent. It's
9 also to remove actual contamination sources where we believe it
10 is practical to do so. To restore the lost water supplies for
11 the City of St. Louis Park has lost due to contamination of those
12 aquifers and as typical of many of these to require a great deal
13 of future monitoring to make sure the situation does not change
14 and that what actually we have implemented, in fact, are meeting
15 the goals that have been set.

16 These goals, hopefully, will be accomplished through
17 the actions that are being requested and they are the use of a
18 granular activated carbon for drinking water treatment systems
19 that you put on existing St. Louis Park wells in order to restore
20 the lost drinking water volume that the City has incurred through
21 contamination. The evaluation and possible closure of existing
22 wells that may be sources of contamination by allowing groundwater
23 in the upper aquifer that is contaminated to move into
24 the lower aquifers. Removal of some highly contaminated groundwater
25 in the immediate vicinity of contamination sources. Those

1 sources will, we have previously removed but there is still high
2 contaminated groundwater in the vicinity of those sources. The
3 implementation of a groundwater gradient control system to
4 control the spread of contaminated groundwater in the area and
5 finally, contingencies to be taken in the event the future drink
6 ing water supply well becomes contaminated above acceptable
7 standards requiring that additional treatment systems be con-
8 structed and operated on the drinking water supplies.

9 The think the Board item is one of the best explana-
10 tions of the problem that exists in St. Louis Park that I have
11 ever had the pleasure to read. It puts, I think, in one spot
12 an understandable explanation of what exists out there, how we
13 believe different aquifers got contaminated and what the necessa
14 actions are for each one of those aquifers. They are explained
15 in greater detail but not quite as understandable in the exhibit
16 to the RCRA which goes into great detail on how we believe those
17 actions are to be implemented.

18 In summary of this portion of the item, we, the staff,
19 believes that all the work that has been done to date supports
20 the need for the actions that are explained in the Board item
21 and the staff recommends that the Board authorize the issuance
22 of a RCRA to Riley Tar and Chemical Corporation to undertake
23 these activities.

24 The second portion of the Board item is to authorize
25 the request that the Executive Director request the Attorney

1 General to amend the existing complaint to include MERLA claims.
2 The existing lawsuit that the agency has authorized pre-dates,
3 as I said, the federal superfund and pre-dates state superfund.
4 It has been amended, I understand, to include federal superfund
5 claims but has not been amended to include state superfund
6 claims. If you approve this action you will make it clear the
7 Board wants the Attorney General to pursue the actions authorize
8 under state superfund so we would recommend that you so authori
9 the Executive Director.

10 The last item that we are requesting you take action
11 on deals with the authorization of up to \$150,000 of state super
12 fund money for litigation costs that are associated with the on-
13 going litigation. These costs are not for either agency staff
14 or attorney general staff. Those costs are presently covered
15 either under general fund appropriations or authorizations from
16 superfund for staff that have been authorized by the Legislature
17 They are, however, to deal with a court-appointed special master
18 that Steve Shakman can further explain to you because I don't
19 believe the agency has been involved in litigation with a specia
20 ster in the past. He can shed some light on that. Since the
21 iling of the Board item, the special master has been appointed
22 so that costs surrounding basically paying his salary and expens
23 ither are or are immediately about to be incurred. In addition
24 neys are requested to deal with the cost of expert witnesses
25 n various sampling, visuals and other such things that are

1 associated with those expert witnesses to prepare them for the
2 trial. There will be other moneys necessary to support those
3 expert witnesses, some of them are coming from the other
4 plaintiffs in the trial; namely, the federal government. It
5 is the staff's position these costs are eligible superfund costs
6 and expenditures and we recommend that you so authorize those
7 expenditures.

8 This completes the presentation of the Board item. I
9 think what I would like to do is I think it would be helpful --
10 I am going to ask Steve Riner to give you a status report on
11 where we are with regard to cleanup under cooperative agreement
12 with the federal government. Steve Shakman will give you a
13 status report on the litigation and finally, I will give you a
14 status report on where we are with negotiations with Riley Tar
15 and Chemical and at that point, I think we will be open for
16 questions.

17 MS. JEPSEN: Mr. Riner.

18 MR. RINER: Madam Chairwoman, Members of the
19 Board: I am Steve Riner with the Division of Solid and Hazardous
20 Waste.

21 As the Board is aware, the investigation at the Riley
22 Tar site has been funded since the first part of 1983 through
23 a cooperative agreement with the U.S. EPA. Prior to that, we
24 had a relatively small grant from EPA during the processing of
25 our superfund grant. Those two grants together have allowed us

1 to complete, first of all, cleanout of two wells on the Riley
2 Tar site, one of which was shown to have been the likely source
3 of contamination to the deep aquifers and it doesn't sound
4 like much work to clean up two wells but the fact is these well
5 prove to be extremely difficult and an awful lot of money was
6 expended on this effort. We believe it was worthwhile.

7 One of these wells has been reconstructed as a monito
8 ring well and we are about to undertake reconstruction of the
9 other well for purposes of pumping contamination out of the
10 Prairiedu Chien-Jordan aquifer. We have also completed a drink
11 ing water treatment study which will lead toward the constructi
12 of a granule activated carbon treatment system in St. Louis Par
13 either by the State, through its EPA grant, or through Riley Ta
14 We have completed a multi-aquifer well survey and we have also
15 completed a groundwater full model which will allow us to desig
16 a gardient control system at Prairiedu Chien aquifer.

17 The first part of October of this year, we submitted
18 to EPA a comprehensive revision to the agreement. In this we
19 are requesting funds for what we see as the final phase of
20 investigation on the site which will extend into the next year
21 and which will allow us to, at that time, decide on what we thi k
22 is a final remedy. EPA has since been in contact with us and
23 we have just completed some revisions to this cooperative agree
24 ment amendment which will allow EPA to take the lead on one
25 phase of these studies. What we intend to do over the next yea

is, first of all, to investigate the shallow aquifer;

1 namely, Drift Platville, and St. Peter, to find the extent
2 of contamination in these aquifers. We don't have, we
3 believe at this time, sufficient data to adequately define the
4 extent of contamination. We would expect this study because
5 EPA can do it under their zone contract, don't have to go
6 through the state administrative process, probably begin in
7 February and finish it up late spring.

8 We will also be conducting a feasibility study which
9 is essentially the second phase of feasibility study for
10 gradient control to determine the best way to dispose of water
11 which will be pumped from the gradient control systems, both
12 in Prairie du Chien-Jordan and also in the shallow aquifers.
13 This study, because it will be going through the state process,
14 will be put through the normal contract process will begin
15 probably in March and will take a couple of months. Also, as
16 soon as the weather improves a little bit in early spring or so
17 we expect to begin reconstruction and pumping of the Well 23,
18 the deep well on the Riley site. We hope to connect this well
19 to the sanitary sewer and pump it for the purposes of removing
20 the contamination immediately around this well. Depending on
21 the outcome of the EPA's administrative order which directed
22 Riley Tar to construct a drinking water system and which you
23 may hear more about, the State can begin on very short notice
24 the design and construction of the drinking water treatment
25 system. That's all I have to report on the status.

1 MR. LANGMOE: Steve, you said that you cleaned
2 up two wells. How many wells are there in that whole area?
3 Would you guess?

4 MR. RINER: Madam Chair, Mr. Langmoe, there are
5 a number of wells around that area and I guess the question
6 becomes what aquifers do they penetrate. There is a number
7 of very shallow wells out there which were either drilled as
8 monitoring wells by the USGS in the late '70's or may even been
9 used by the residents in that area. These are generally finish d
10 into the Drift Platville and maybe even in the St. Peter aquifer
11 In terms of significance, deep wells out there we are concerne
12 mainly with the two wells on the Riley Tar site. There are s
13 other industrial wells to the east of the site which are of s
14 concern to us and I would count maybe half a dozen or so. We
15 believe these are multiaquifer wells and these will require
16 some investigation to see if they are contributing to contamina
17 tion from the heavily contaminated shallow aquifers down into
18 the Prairie du Chien-Jordan.

19 MR. LANGMOE: One of the -- at one point I
20 either read or it was presented here at the Board meeting that
21 there is concern that several of these wells or casings are
22 deteriorating and therefore, there is a very real possibility
23 of contamination from the shallow aquifer to a much deeper
24 aquifer. I am wondering if we are just going to sit by and let
25 that happen. Is there any -- time is slipping by and if this i

1 happening, if there is a program or a plan to perhaps recase
2 those wells that are bad so that -- to me, that could be extrem
3 serious. I think the whole thing is very serious, but it's eve
4 worse if there are some of those old wells that are four, five
5 or six inch they are allowed to continue to disintegrate that
6 we contaminate the aquifers.

7 MR. RINER: Mr. Langmoe, in answer to that
8 question, even if at the time the original agreement was drawn
9 up we had a plan to investigate those wells to which you refer
10 and the only reason we haven't gotten to them to date is becaus
11 the work on the wells on the Riley site have taken up most of
12 our time. Next year we will be getting into an investigation
13 of eight wells that we have identified as being potentially
14 multiaquifer wells. Mainly located east of the site and we
15 are concerned about these, not so much because of the deteriora
16 tion of the casings, but because these wells were constructed
17 before the Department of Health developed its current well
18 construction code and these are not properly grouted and so
19 they allow water to flow down between the casing and the bore
20 hole. We will be looking at these to see, if, indeed, they
21 are sources of contaminated water.

22 MS. GREEN: Madam Chairwoman, I guess my questi n
23 are along a similar line. First, I understand you did, though,
24 in the cleanout of W23 and (tape was turned)

25 MR. RINER: The one well, W 105, has been

1 permanently reconstructed as a monitoring well and the other
2 well, W 23, is awaiting final reconstruction. It has temporary
3 packers in it to prevent down, the full flow of contaminated
4 water.

5 MS. GREEN: I am curious to know what you meant
6 in the agenda item of W 23 that you are not able to get down
7 as far as the Hinckley-Mt. Simon aquifer. What does that mean
8 specifically? Was it just it was so deep?

9 MR. RINER: No, the problem with the well is we
10 found debris at the bottom of the hole and we lost our baler
11 at the bottom of the hole. Both 23 and 105, I guess, conjectur
12 has it, there is a monster down in the Mt. Simon that eats well
13 drilling equipment and it got to a point where it wasn't cost
14 effective to try to recover balers and other equipment which
15 became caught down in the formation.

16 MR. WIKRE: In response to both of the question
17 and previously the State, through state contracts and grants fr
18 the Legislature, if you will, have already abandoned or re-
19 constructed some 30 multiaquifer wells that we were aware of
20 that were open to more than one aquifer so what we have done
21 is over the years have already abandoned some 30 of those
22 potential sources of contamination and what is in the request
23 for response actions are some that are left to be investigated
24 to see if they are actually problems. The known ones, basicall
25 have been handled and those were some of the first response

1 actions that were actually taken out there that weren't just
2 studies and those were done with state funds and I believe some
3 federal funds in the early years, possibly the RCRA grant,
4 I am not sure. We already have abandoned, or reconstructed
5 some 30 wells out there.

6 MR. LANGMOE: Have we aged those wells; in other
7 words, do you feel we have a handle on the wells; know how old
8 they are; the state of the casing, I think that would be
9 extremely important and how we are properly prioritizing how
10 we approach those wells.

11 MR. WIKRE: Madam Chair, Mr. Langmoe, there has
12 been a great deal of work that was done, primarily by the Health
13 Department, and under contract to the Health Department, to
14 look at those wells, down hole televising of the wells to
15 and mostly, it's just been investigation. It was obvious from
16 the drilling logs that they were not cased. They were an open
17 hole through the various aquifers so that they were cleaned
18 out and either reconstructed as single aquifer wells or were
19 completely abandoned if the wells were not in use.

20 There has been a great deal of time spent in trying
21 to locate wells for St. Louis Park and many of them have been
22 found. There are some speculation that some may never be found
23 and in a suburb as old as St. Louis Park is that there are not
24 always records, even though we have records that go back to 191
25 there are wells that may have been drilled that no one knows of

1 and they are under foundations so they may never be located
2 but there has been a great deal of time and money spent looking
3 for, searching, and defining what wells are out there. I think
4 what we have got is about the best handle that money can buy.

5 MS. GREEN: I guess, by the way, wanted to say
6 I thought the organization of the discussion with aquifers in
7 the Board item was very good and also, the crosssection in
8 Figure 2. What are you going to use and how far afield are you
9 going to go in terms of trying to define the contamination of
10 the ^(?)official aquifer and the St. Peter?

11 MR. WIKRE: Madam Chair, Mrs. Green. I think
12 the first step in any investigation like this is to review the
13 data that we do have. There are some analyses, especially of
14 the very shallow wells, that date back five or six years. This
15 serves as a good starting point. It will tell us where the
16 gaps are in our information. We will then use that to decide
17 if we need to either (a) install more wells or (b) go back
18 and resample existing wells to get the information we need.
19 There are a lot of wells existing in the Platville. There
20 is not so many in the St. Peter. That's the biggest question
21 mark of all.

22 MS. GREEN: I have a friend who has a well in
23 the St. Peter in Edina. I just wondered if you are going to
24 go that far and utilize existing residential wells whether
25 they are abandoning or under current use.

1 MR. WIKRE: Wherever possible, of course, we
2 like to use existing wells as long as we know what we are
3 sampling. Of course, if there is not enough information on
4 the wells to tell us how deep it is or what aquifer it's finish
5 in, then we wouldn't get reliable enough data.

6 MS. GREEN: You go to the Department of Health,
7 are there well logs in terms of where there might be residentia
8 wells as deep as the St. Peter?

9 MR. WIKRE: MDH has information on those and al
10 the Minnesota Geological Survey, USGS because of the amount of
11 work they have done out there also has a fairly extensive list
12 of wells.

13 MS. GREEN: You don't do any community survey
14 work to go back further than when the Health Department might
15 have been keeping records. How old are their well log records?

16 MR. WIKRE: I guess I will try to answer the
17 question I think you have asked there which is that at the first
18 part of the work that was done by Hicoch & Assoc., mainly they
19 were overseeing the reconstruction of the wells on the Riley
20 site. They also conducted a well survey in St. Louis Park.
21 We went out east of Hwy. 100, dropped off questionnaires on
22 all the homes out there and people, do you have a well and how
23 much information can you provide about that? We did get some
24 information on that. It was mainly to identify multiaquifer
25 wells but it also enabled us to find the location of residentia

1 wells we might not have otherwise had information on.

2 MS. GREEN: My second question: how far back
3 in the Department of Health do well log records go? When did
4 they start keeping them?

5 MR. WIKRE: I am not sure what the cutoff date
6 is on that and because they would get their information from
7 several sources, number one, being people who had gotten permits
8 to install wells; and, of course, that's only been -- how long
9 would you say, Dale, 10-20 years that they had that requirement?

10 DALE: Less than 10.

11 MR. WIKRE: That's not a real reliable source
12 because MDH did a lot of work in the early stages of the investi
13 gation. They have gotten this information through other means,
14 either Minnesota Geological Survey, USGS study, surveys that
15 they themselves did. I think a lot of the information came
16 from drillers. All of the old files and memory of the drillers
17 in the area.

18 MS. GREEN: The survey has not gone outside of
19 the municipality of St. Louis Park?

20 MR. WIKRE: I don't believe we have gone east
21 of France Avenue which is the eastern city limits of St. Louis
22 Park.

23 MS. GREEN: How about south?

24 MR. WIKRE: My memory is we haven't got south
25 into Edina either to, at least -- we are more concerned east th

1 south.

2 UNIDENTIFIED SPEAKER: Madam Chair, the models
3 and larger capacity wells go outside the city, but as far as
4 door to door searches for the shallow wells, I think that's what
5 Steve is referring to.

6 MR. WIKRE: Mr. Shakman will now give you the
7 status of the lawsuit.

8 CHAIRWOMAN: Did you have a question, Mr. Gadler?

9 MR. GADLER: Yes, I do. I would like to know
10 since Riley Tar has been before the agency since the agency was
11 created, how much longer is it going to continue as a problem?

12 MR. WIKRE: Madam Chair, Mr. Gadler: I guess
13 we can't answer that for sure. We are, as Steve has talked
14 about, our ability to get money through the federal government
15 and we are at a stage now that if nothing slows us down and if
16 the administrative process doesn't slow us down, we will be able
17 to begin the construction of the water treatment system in
18 1985. We will probably be able to begin the construction of
19 the gradient control wells in 1985. In addition, Mr. Shakman
20 is going to tell you about how the lawsuit is finally going to
21 start and I will then, after that, talk about negotiations and
22 through one of these three processes, we believe we are going
23 to be able to get the cleanup started in 1985 in St. Louis Park.

24 MR. GADLER: Thank you.

25 CHAIRWOMAN: Mr. Shakman.

1 MR. SHAKMAN: I am Steve Shakman with the Attor
2 General's staff. I have spent about five years actively involv
3 in this litigation and will try and give you in less than five
4 minutes a summary. In that five years, I have learned a lot
5 of extraneous facts. One goes back to Ms. Green's question and
6 I have noticed in old Health Department files that we have
7 reviewed that the Health Department, I would say back late '70'
8 was looking at Edina wells and private wells. Being Mr.
9 Schwartzbauer, the Riley counsel is here today, who happens to
10 live in Edina, I remember his name because he had a private
11 well listed.

12 I would like to explain the litigation in two phases.
13 One I would like to call the case in chief and another is the
14 side issues. I then get from the side issues into why we are
15 requesting your authorization for money for a special master
16 because that very much relates to the side issues.

17 The case, as it now exists, is pending in the Federal
18 District Court in Minneapolis, assigned to Judge Paul Magnuson.
19 The plaintiffs in the case are the City of Hopkins which has
20 closed one of its municipal wells due to contamination attribu
21 to Riley. The City of St. Louis Park, which has closed six of
22 its wells. The State, on behalf of this agency, the Commission
23 of Health, the Attorney General, and the United States, on beha
24 of the US Environmental Protection Agency. The case in chief
25 deals with three aspects. The further remedial cleanup. What

1 still needs to be done. Mr. Riner has touched on these items
2 like further drinking water treatment; gradient control;
3 addressing the near surface contamination and there we seek an
4 order requiring Riley to take care of those things, an injunc-
5 tive order.

6 A second element would be what has gone on before us.
7 The cost for the previous remedial action. For example, the
8 Department of Health were closing those wells, 30 some wells
9 filled with concrete. The cost of the several studies that
10 are listed in your report. The administrative costs of the
11 agency. All those areas are second phase.

12 The third area in which we seek relief are damages
13 for natural resources. This is a somewhat new legal claim
14 created under the federal superfund laws which we have envoked
15 and which, if we proceed to have the state superfund law,
16 receive the court's permission to add it, we would also seek
17 under that law. I would say the provisions are roughly co-
18 terminus. That would be a third type of action, one requiring
19 monetary damage payment.

20 The case in chief insofar as it deals with the two
21 federal laws we are involved with, the federal superfund law,
22 the Federal Resource Conservation and Recovery Act, and on
23 the elements of liability and remedy, are now scheduled to be
24 tried before the Court in late April, 1985. That would include
25 the claims of the two cities, the state and the federal govern-

1 ment as to is Riley the party responsible for this and if so,
2 what's the remaining remedy that ought to be done. All the
3 other issues that I listed, including numerous defenses Riley
4 has raised are reserved to phase two of the trial which I would
5 estimate would be probably a year down the road. In that phase
6 we would have those issues of prior cost of natural resources
7 damages and of a number of the defenses and other issues that
8 I lump as the side issues and in there, we have defenses by
9 Riley that relate to the fact they have a lawsuit commenced
10 in 1970 by this agency and the City of St. Louis Park concernin
11 Riley's ongoing operations that the City subsequently purchased
12 the former Riley site; Riley went out of business; that some
13 years later at the request of this agency, the Attorney General
14 reactivated the lawsuit and Riley has claimed in their legal
15 pleadings that the City, by the agreement made, indemnity
16 agreement at the time of the purchase, bears the responsibility
17 for this.

18 They also raised a number of other defenses, some of
19 which we have already successfully addressed. They raised the
20 claim the State had settled that 1970 suit; thereby barred
21 from this suit. We brought a motion for summary judgment which
22 was granted by Judge Magnuson. They raised the defense that
23 an MPDES permit issued by this Board in 1975 was an administra-
24 tive repudication by the State and by the EPA, that St. Louis
25 Park bore all liability and that Riley did not. Judge Magnuson

1 also threw out that defense although all these took no real work
2 on the part of our legal staff. There are other defenses
3 concerning a indemnity agreement in St. Louis Park concerning
4 the legal doctrine of laches, whether the State took too long
5 in bringing this concerning challenges to the constitutionality
6 of the federal laws all of which are still pending. Most of
7 those will be part of that phase 2 trial.

8 In regard to these issues of what was the agreement
9 with St. Louis Park and what was the State's role in that Riley
10 has taken, I guess 30 depositions, or in that neighborhood,
11 none of them addressed to the case in chief. Everyone addressed
12 to what was happening in the early 1970's. These depositions
13 included Mr. Grinnel, who I see here today, former Board
14 member Field, three prior directors, John Bacalich, Grant
15 Merritt, Sandra Gardebring, Mr. Heffern and Mr. Kaul have had
16 their depositions noticed. We deposed those and resolution of
17 that are awaiting a ruling that Judge Magnuson is presently
18 working on. There has been a lot of time and effort on these
19 discovery disputes and under the federal system, those are
20 generally addressed by a lesser federal judicial officer known
21 as the U. S. Magistrate. He then decides on the right of appeal
22 to the judge. The Judge has indicated that this case will take
23 a very long time to get to trial if we proceed in that fashion.
24 The Magistrate has a number of other responsibilities, many of
25 them in the criminal area that he would prefer to find a lawyer

1 his preference, a prior judge, who would serve as a special
2 master, which he has authority to appoint under the Federal
3 Rules of Civil Procedure, and which differs from the Magistrate
4 primarily in that the parties to the case, rather than the
5 U. S. Treasury, bears the cost of the special master's time.
6 By an Order dated November 30, he appointed former State Trial
7 Court Judge Wenton of Minneapolis to serve as such special
8 master at a rate of \$100 per hour for his services, the cost
9 to be divided among the parties. We haven't worked that out
10 with the other plaintiffs. We will probably pay around a fourth
11 of that.

12 His one assignment is to take those discovery dispute
13 and decide them in lieu of going to the U. S. Magistrate. At
14 the present moment, we have none before him. It's likely that
15 some will come up and I have spent a good deal of time on that.

16 His second assignment is to facilitate settlement
17 discussions. Dale Wikre will address later where those discus-
18 sions are at. We have our first meeting with Judge Wenton at
19 9 a.m. tomorrow morning and may know better after that what
20 role he wants to take in that. Again, that could be a matter
21 that would consume a good deal of his time, would be part of
22 what we required the funding for.

23 Finally, on the matter of the funding, we have asked
24 for additional money related to expert witnesses. In the phase
25 one trial, the one dealing with remedies still to be done, is

1 Riley responsible. The U. S. is funding the direct salary cost
2 of probably a half dozen expert witnesses who will be presentin
3 the case. The Attorney General's staff and the staff of Solid
4 and Hazardous Waste Division are working very closely with a
5 number of the witnesses. We do have some expenses there relati
6 to preparing exhibits, getting materials to witnesses scattered
7 around the country to review and to be able to testify to the
8 technical complexity of this problem. We anticipate for Phase
9 Two where we are dealing with natural resource damages in which
10 the US has no claim, which is a solely state claim, that we wil
11 be footing the bill for experts on that area and for that reasc
12 we will need some of the \$150,000 sum that we have requested
13 in this Board item.

14 I would like to respond to any questions at this poin
15 I would want to say much in the tone Ms. Gelpe said the legal
16 staff has greatly appreciated the support we have been receivin
17 in the last month in this litigation from the Solid and Hazardo
18 Division staff. It's very difficult, arduous work, often done
19 in a rush because of litigation deadlines and the several peopl
20 assigned, both on the litigation side and the cleanup side have
21 been a tremendous help. It wouldn't be possible to do anything
22 in the way of a successful lawsuit without them. We did last
23 April, jointly the Attorney General and the Director raised
24 with the Legislature the need for additional positions and
25 received two technical positions for the staff; two clerical

1 positions to help the several people we have working already
2 in the Attorney General's Office and together, I think, we
3 mounted quite a successful effort and whether it follows through
4 to both phases of trial; whether we are able to reach a settle-
5 ment; I think either one is only possible when you put that
6 final effort together.

7 MS. GELPE: Questions of Mr. Shakman? We will
8 move to our appearance request here. Mr. Wikre.

9 MR. WIKRE: I have a minute on negotiations.
10 When we first sent you the Board item, we sent you the Board
11 item early before the normal mailing of the previous meeting
12 so that we could also supply the Board item to Riley Tar and
13 Chemical. We have, in the past, about this time last year,
14 attempted through a series of negotiations, to reach some
15 kind of settlement with Riley Tar. Those efforts were un-
16 successful and basically were terminated in the spring of last
17 year.

18 Through a combination of factors, including administr -
19 tive actions that the federal government must take prior to
20 releasing funds; namely, that they have to make a demand on
21 responsible parties before they could release money to us to
22 build a water treatment works, that brings Riley Tar to the
23 table to negotiate on that point through the efforts of the
24 court which has sent a strong message to the parties involved
25 that he prefer that this matter be settled rather than going

1 through a lengthy trial. I guess as a result of our general
2 policy of trying to settle these matters, and the usual pressur
3 of an impending lengthy trial, brought us to try to resolve
4 this matter one more time through negotiation and so on Novembe
5 2, besides sending out the Board item that you received, mailin
6 of that date, we also sent out a draft of a consent order from
7 the federal government and the State of Minnesota that would
8 serve as a way to settle this lawsuit and solve the problem
9 out there.

10 We met with the company on November 8 to allow them
11 to question the technical portions, the cleanup portions of the
12 draft consent order so that they had a good understanding of
13 what we were requesting of them. We had a second meeting where
14 we met with all the parties involved in Chicago on December 6.
15 As a result of that meeting, while the two sides were not in
16 total agreement, there was general belief that we were close
17 enough on the technical cleanup issues that Riley Tar and
18 Chemical is going to re-draft the cleanup portions of the order
19 and submit to us somewhere soon after the first of the year,
20 I understand, what their proposals would be to address the
21 goals that we have laid out and to undertake the remedial
22 actions necessary at the site and will be reviewing that when
23 that's provided.

24 In addition, because we were believed to be close
25 enough on those issues, we decided to begin the discussions of

1 the legal part of the order involving the releases, past costs,
2 future costs; those particular issues. The first meeting on
3 that will be tomorrow afternoon when we will meeting with the
4 company to go over the order portion of that document and to
5 answer questions so that once again Riley understands what is
6 in the document, what we mean, so that they can evaluate that
7 particular proposal.

8 The RCRA issue, it has -- talks about negotiations
9 that would terminate on January 3, assuming Riley Tar is
10 interested and presents proposals that are worth negotiating
11 over, we will not have completed negotiations by January 3
12 unless they are unsuccessful in negotiations, we will not have
13 successful negotiations by that date so we will keep the
14 Board informed on how that process is going in the future.

15 With that, I think the staff is completed with its
16 presentation.

17 MS. GELPE: Thank you, Mr. Wikre. Mr.
18 Schwartzbauer.

19 MR. SCHWARTZBAUER: Madam Chair, Members of the
20 Board: Thank you. My name is Ed Schwartzbauer and I am a
21 partner at the Minneapolis law firm of Dorsey & Whitney. Robert
22 Pollock, who is the general counsel and Vice President of Riley,
23 is here with us today, too. Maybe you wondered why we bothere
24 to appear in this proceeding this morning because maybe you
25 thought that a request for response action was long over due

1 given the fact that this matter has, as Mr. Gadler pointed out,
2 been with us here in Minnesota for over a decade.

3 I am here to tell you that a request for a response
4 action is not overdue given the posture of negotiations and giv
5 the posture of the litigation between Riley on the one hand and
6 this agency and the EPA on the other. In fact, we believe that
7 the matter is totally inappropriate at this particular time.
8 As you have been told, this case is in the courts. A trial
9 to determine the appropriate remedy is scheduled by Judge
10 Magnuson for April of 1985. The federal court, under federal
11 law, federal superfund and under the Resource Conservation
12 Recovery Act, has abundant power to protect the public health
13 and environment. The federal court has this broad sweeping
14 injunctive powers at any time that Judge Magnuson thought
15 this matter wasn't moving fast enough or that the public
16 health or the environment were in danger, it had the power
17 to issue a temporary injunction. If he did that, Riley would
18 be in contempt of court if it failed to obey it. This law-
19 suit has been pending in federal court since September of
20 1980. The lawyers representing the Minnesota Pollution Control
21 Agency and the lawyers representing the U. S. Government, have
22 not seen fit to move for any temporary injunction.

23 As Mr. Wikre indicates, we have been negotiating
24 with the PCA for quite some time but let me say this, in our
25 governmental system, there is a place for administrative orders

1 such as the one the staff is asking you for today. In general,
2 the concept is that an agency such as this one, ought to have
3 many weapons in its arsenal. It ought, for example, have the
4 power where a public health emergency exists, to utilize
5 the administrative orders authorized by the state legislature
6 rather than use the laws in the courts at the present time.
7 something needs to be done promptly about the situation.

8 In addition, agencies like this one ought, arguably,
9 have the power in the case of a recalcitrant or a non-cooperat-
10 ing responsible party, to issue administrative orders in lieu
11 of or as an alternative, to go into court. What about this
12 case? Benzo (a) pyrene, which is regarded by some as an
13 animal carcinogen, was discovered in the soil at the former
14 site of the Riley plant in 1974, ten years ago. Other poly-
15 nuclear aeromatic hydrocarbons which are substances produced
16 by combustion and which have been in our world with us
17 since the first forest fire started by lightning, were
18 discovered in the groundwater in 1978. In response to that
19 the City and the State decided to close municipal drinking
20 water wells in St. Louis Park and those wells are not being
21 used. After more than 55 consultants' reports and the expendi-
22 ture of millions of dollars, by the State and by local govern-
23 ment and by Riley Tar and Chemical, you are now being asked
24 to issue a request for response action on RCRA which would
25 require Riley to prepare more studies, a remedial investigatic

1 of the Drift Platteville and the St. Peter and other sub-surface
2 soil and the feasibility of groundwater steam in the Prairie du
3 Chien discharge of water to some place that hasn't yet been
4 identified and to set up reports and monitoring plans.

5 Let me recount the history of this to tell you what
6 Riley has already done along those lines. In May of 1983,
7 Riley submitted to this agency a very comprehensive report
8 prepared by Environmental Research and Technology, Inc., paid
9 for by Riley at a cost of over \$600,000 and there followed
10 almost a year of constructive negotiations concerning the report.
11 In the spirit of compromise, Riley made lots of suggestions
12 and offers that went way beyond anything recommended by its
13 consultants.

14 On June 21, 1984, Riley made a written proposal to
15 this agency which, and to the EPA, which set forth in detail
16 aquifer by aquifer a remedial action plan which addressed each
17 of the aquifers that are addressed in this staff report that
18 you have seen in the agenda materials today. I am not contend-
19 ing the EPA or the PCA have any obligation to accept Riley's
20 proposal. The nature of this kind of subject matter is that
21 consultants will disagree as to lawyers. I do think the PCA
22 and the EPA have an obligation to respond within a reasonable
23 time and without trying to penalize Riley, monetarily, for
24 delay caused by the governmental parties. Riley received no
25 counterproposal to its written June 21, 1984 offer until the

1 first week in November. That was magically two days before a
2 scheduled status conference before Judge Magnuson at what
3 earlier expressed his displeasure with the governmental foot-
4 dragging in this case.

5 I am not saying that's Mr. Wikre's fault or Mr. Shahn
6 or Mr. Riner's or Mr. Kaul's or Mr. Kalitowski's. There are
7 other parties to this lawsuit. EPA has to be involved; EPA
8 has to go through its layers of approval to federal hierarchy
9 but the reality of that federal bureaucracy has to be dealt
10 with in assessing the overall fairness to Riley involved in
11 issuing an order such as this one at this time which would
12 carry with, under the Minnesota superfund act a penalty against
13 Riley of \$20,000 a day for every day Riley would fail to
14 comply with it. Within 24 hours of that status conference in
15 November that I mentioned, Riley was back at the negotiating
16 table meeting with the PCA. By the way, it's June 21, 1984,
17 written proposal was not something that was forced out of it.
18 There was no federal administrative action that has been taken
19 against Riley at that time. That has been an order issued
20 to Riley under Section 106 of the Federal Superfund law but
21 that was not issued until August of 1984 substantially after
22 Riley's written proposal.

23 In the meantime, in that five month period, that
24 passed, with Riley receiving no response whatever to its
25 proposal, Riley was spending between \$50,000-\$75,000 a month

1 on trial preparation which is necessary under Judge Magnusons'
2 case management order for lawyers and consultants. Riley took
3 the initiative in September in proposing to Judge Magnuson that
4 we bifurcate this case. Riley wanted to put aside the side
5 issues relating to settlement as between Riley and the City of
6 St. Louis Park and arguably the State of Minnesota. It was
7 Riley that suggested the appointment of a special master and
8 initially the state and federal government opposed the appoint-
9 ment of a special master. So, in that context, this matter
10 comes to you with the theory that we need to apply some pressure
11 on Riley to get the matter resolved. The matters presented to
12 you with the idea, apparently, that we should disregard Judge
13 Magnuson, disregard the federal court which has jurisdiction
14 over the matter and we will decide whether there is a reasonable
15 and cost effective remedy next April and we will just issue
16 this request and Riley is penalized \$20,000 per day for each
17 day it doesn't comply. I compare that situation, perhaps,
18 to any other involving the give and take of bargaining, situa-
19 tions that you might come across in your daily lives. Maybe
20 some of you will bargain with unions on behalf of management or
21 maybe some of you bargain on behalf of unions with management
22 or maybe some of you have negotiating sessions regarding the
23 value or the sales price of real estate or personal property.
24 Envision yourself if you are in that kind of situation and the
25 party on the other side of the table said to you after himself

1 having delayed the matter for a year, and caused immense expenses
2 in the meantime, saying I am ordering you to do it my way or
3 else you will be penalized \$20,000 a day. I suggest that you
4 might do one of two things. You might be terrorized into
5 doing it his way or else you might stand tall and just be
6 tempted to walk away from the bargaining table. Neither of
7 those choices are the desirable one. Riley doesn't want to
8 be in the position of having to make those decisions and I
9 expect that this Board doesn't want to destroy the negotiating
10 process and neither does it want to govern via this kind of
11 a terroristic governmental operation. Judge Magnuson has
12 just appointed a special master who was appointed to try to
13 get this matter resolved both with respect to the issues of
14 form of remedy and the issues of penalties and costs and so
15 forth and the most prompt and expeditious manner. We are
16 starting to meet with him and will be meeting with him tomorrow

17 I suggest that in view of the federal's courts effort
18 to get the matter resolved, to require something to be done
19 which exacerbates the situation between Riley and the State of
20 Minnesota is counterproductive. Given this request for a
21 response action, there is going to be a strong temptation
22 at least to do something about it. Perhaps, to go into federal
23 court and ask for a stay of the penalties as was recently done
24 in a, successfully by a industry in the State of California
25 under the federal law.

1 In any event, that's precisely the situation that
2 you will be forcing upon Riley if you vote in favor of this
3 RCRA this request, this order. I simply ask you to consider,
4 given the posture of the litigation and these negotiations
5 whether that vote is really consistent with the tradition of
6 good government that we have in the State of Minnesota. I
7 might say this: insofar as there are three requests before
8 you made by the staff, first the issuance of a response order,
9 the second the amendment to the litigation to assert MERLA
10 claims and third, the authorization and expenditure of moneys
11 for litigation expense, I suggest that you can vote in favor
12 of the third, the authorization of money for the special master
13 and for expert witnesses fees without necessarily voting in
14 favor of the first two.

15 With respect to the second item, the authorization
16 to amend the complaint and to assert MERLA claims, the assertic
17 of MERLA claims at this time is going to accomplish nothing at
18 all in terms of giving the court any additional powers. The
19 court has abundant powers under the Federal superfund act to
20 grant any remedies that the court finds to be appropriate on
21 the facts and the evidence. I simply ask you to keep this in
22 mind. We have a great system in this US. We have a system
23 of, in the federal courts, where the parties are required to
24 come in and bring in facts to prove there really is a risk and
25 that the risk really is great enough to justify a given remedy

1 and let's not ignore that great system that we have in order
2 to go to a kind of administrative system which simply is not
3 warranted, given the posture of the case.

4 Thank you.

5 MS. JEPSEN: You mentioned a couple of times
6 in your comments the possibility of being liable for \$20,000
7 a day penalty if you were not in compliance with the RCRA.
8 I guess what my question is: whether or not you have any
9 problems with the content of what the RCRA is requesting you
10 to do?

11 MR. SCHWARTZBAUER: Ms. Jepsen, there have
12 been some very significant discussions about the remedial
13 aspect of this case over the past year and a half. I can be
14 glad to discuss those with you, if you want me to. They
15 are technical and they are complicated. In general, however,
16 Riley has submitted technical reports and engaged in technical
17 discussions with the staff which does address the preceived
18 problem with respect to each and every aquifer that is
19 discussed in the agenda materials that you have.

20 MS. JEPSEN: I want to clear one thing up.
21 MERLA is our major state law on these issues. We have been
22 given very important responsibilities by the State in
23 administering MERLA. You certainly don't mean to suggest we
24 are being terroristic if we think we have to act under that
25 responsibility?

1 MR. SCHWARTZBAUER: I certainly did. You can
2 act or not act as the particular facts seem to justify that
3 activity. I suggest to you that to issue an order to a party
4 who is preparing to go to trial in the US District Court and
5 who has, in fact, been negotiating for settlement is terrorist
6 yes.

7 MS. JEPSEN: Does the Board have any other
8 questions? Does the staff have any comments in response to
9 Mr. Schwartzbauer's presentation?

10 UNIDENTIFIED SPEAKER: Madam Chair, it should
11 be obvious that we have had these discussions with the company
12 previously and Mr. Schwartzbauer has not convinced the staff
13 we should change our recommendation on going ahead with this
14 process. I think he started off with problems characterizing
15 somewhat the staff's position that the issuance of the RCRA
16 is probably long overdue and would, in fact, would have been
17 done long ago if it were not for the fact that the state has
18 a credit in, with the federal government, because of our
19 past expenses and therefore we are not expending state dollars
20 in the past. We would have had to go through this process
21 to come up with our 10% match on certain actions a couple of
22 years ago when moneys were available if it had not been for
23 that credit, so that has allowed us to not take the time to
24 prepare the Board items and the various documents and try to
25 continue along with the cleanup process. At this point in ti ,

1 we think it's important and appropriate to go through the
2 administrative procedures that we have used on the other
3 sites in the State of Minnesota and to complete the process,
4 the administrative process, if you will, on this site so that
5 we can move on to the other actions. We don't believe that
6 it is going to be a problem in the negotiations. In the past,
7 it has been a catalyst in the negotiations. We have, after
8 the issuance of many RORA's, have come to an agreement on
9 consent orders so we do not believe this is counterproductive
10 in that particular area. Our recommendation, strong recommenda
11 tion, is to go ahead with the three requested actions that the
12 staff has brought before you.

13 UNIDENTIFIED SPEAKER: Madam Chair, I move
14 the staff resolution.

15 DR. DAHLBERG : I second it. May I say something?

16 CHAIRWOMAN: Dr. Dahlberg.

17 DR. DAHLBERG: There was one factor that has
18 bothered me in all of this. I see it coming up over and over
19 again. That is the question of whether or not companies have
20 deliberately caused a problem for that -- problems have been
21 caused because of lack of knowledge through the years and then
22 the sudden discovery that things are toxic or that the ground
23 is more permeable than it ought to have been. It seems to me
24 that somewhere along the way and maybe that's going to done
25 in the courts. Some decisions will have to be made as to

1 whether or not companies have really been negligent or whether
2 it has been the lack of knowledge. I don't know if that is
3 being addressed or can be addressed easily. Whether the
4 courts will do that in the process.

5 MR. SHAKMAN: Dr. Dahlberg, Madam Chair. If
6 I may address that. One of the defenses Riley has raised to
7 the Federal superfund law is one that is violation of due
8 process, improper taking to impose any liability on them for
9 what they would describe as acting according to the ordinary
10 standards of the day. We think other courts have addressed
11 that issue elsewhere and have held that the law is constitu-
12 tional in terms of addressing that kind of problem. There is
13 a strong precedent in that area of laws dealing with coalminers
14 and plague lung disease where, in the early '70's, a federal
15 scheme was created for compensating people who may have receive
16 had the exposure that led to this disease 50 or 60 years ago.
17 In terms of this particular problem, one of the chief sources
18 of pollution as Steve Riner described, is the well directly
19 on the Riley site when it was cleaned out by contractors to
20 the state using federal superfund dollars in 1972 shown to
21 have a 150 feet of this black coal tar like material at depths
22 of 590 to 740 feet where through ordinary geological processes
23 to reach that depth it would take literally forever. How that
24 came to be there -- our investigation hasn't determined, and
25 I think honestly the company doesn't know either. Mr. Kline

1 of our office went to Florida to take the deposition of an 84
2 year old former chemist of the plant who walked off that site
3 in 1934. He was there from 1923 to 1934. We deposed a man
4 in his 90's one time who was the chairman of the Board of the
5 company. There were various rumors about it. How that came
6 to be there, we don't know. The statutory scheme says we aren'
7 going to run up legal expenses for a long time figuring those
8 out. We have those four things, facility; release of hazardous
9 substance; response cost, the responsible party is going to be
10 apt to do it. Certainly, in some of those instances, whether
11 this is one of them or not, those people will not have been
12 negligent but we submit the Court has added an appropriate
13 scheme, one reflected in our state superfund law and in the
14 federal law that we are already using.

15 DR. DAHLBERG: That will probably be decided
16 in the Court?

17 MR. SHAKMAN: That's correct.

18 MS. JEPSEN: I have a question. I guess I am
19 just trying to understand this a little better in my own mind.
20 Is the rationale behind issuing this RCRA at this point in
21 time not so much because of the pending litigation that's going
22 on but moreso so that superfund moneys can be used by the
23 agency for expenses that are either ongoing or upcoming?

24 MR. SHAKMAN: From the litigation prospective,
25 the answer would be yes, enable the expenditure, superfund

1 money for those litigation expenses, special master, expert
2 witnesses, related litigation costs, from the prospective
3 of the remedial program, Dale described, there is a map based
4 upon expenditures by the state and city of St. Louis Park
5 between, I believe, January 1, 1978, to December 10, 1980,
6 which can be used to receive nine federal dollars for one of
7 those dollars. We have not as yet come to the end of that.
8 I leave it to the agency staff to say when in time this remedial
9 process we may get it. In terms of the money item included
10 here, that's definitely the litigation item.
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KIRBY A. KENNEDY & ASSOCIATES
PHONE: (612) 625-1989

411 EDINA EXECUTIVE OFFICE PLAZA
5200 WILSON ROAD
MINNEAPOLIS, MINNESOTA 55424

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ST. PAUL, MINNESOTA

1 STATE OF MINNESOTA)
2 : SS.
3 COUNTY OF HENNEPIN)

4 Be it known that I transcribed the tape recording of Item
5 7, Issuance of a Request for Response Action of Riley Tar
6 and Chemical Corporation on February 1, 1985, at Roseville,
7 Minnesota.

8 That the tape recording was transcribed into typewriting
9 under my direction, and that the same is a true record of the
10 tape recording to the best of my ability.

11 That I am not related to any of the parties hereto nor
12 interested in the outcome of the action.

13 WITNESS MY HAND AND seal this 6th day of February, 1985.
14
15

16 _____
17 Mary Reichling
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